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July 1, 2019

VIA ELECTRONIC FILING

Jocelyn C. Boyd, Esquire  
Chief Clerk & Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, South Carolina 29210

Re: Duke Energy Progress, LLC's ("DEP") Response to Office of Regulatory  
("ORS") Letter Dated June 27, 2019 Regarding Commission Decision on  
Recovery of CertainTEED Costs - Docket No. 2018-318-E

Dear Ms. Boyd:

On June 27, 2019, ORS requested clarification from the Commission regarding the recoverability of \$830,000 of costs related to the Company's litigation with CertainTEED. Specifically, ORS requests clarification "as to whether the Commission intends to allow the Company to recover \$830,000 based on the Company's On-Going Payment Obligation to CertainTEED provided in Adjustment #38, CertainTEED-related litigation expenses included in Adjustment #36, or both." The Company does not believe that clarification is necessary because the Commission made it clear in its ruling on reconsideration that it intended to approve the Company's adjustment of \$830,000 related to the CertainTEED on-going payment obligations resulting from the settlement, which aligns with the amount of the Company's Accounting Adjustment #38. The ruling does not apply to Adjustment #36. Specifically, the June 19, 2019 directive issued by the Commission states:

Upon further reflection, I move that we do reconsider the treatment of CertainTEED litigation costs. The Company's decision to defend itself and to enter into the settlement was a strategic, reasonable, and prudent decision, and a decision that had a net benefit to ratepayers of \$50 million. Therefore, the ***CertainTEED litigation cost adjustment of \$830,000*** should be recoverable.

(Emphasis added.) The emphasized language is a clear indication of the Commission's intent to allow the Company to recover the on-going settlement costs in a total amount of \$830,000. DEP's interpretation also appears to be supported by the *ORS Answer to Duke Energy Progress, LLC's Petition for Rehearing or Reconsideration of Order No. 2019-341* ("ORS Answer") which includes under the heading of "CertainTEED Litigation Costs" the amount of the settlement that is the basis of the annual adjustment in the Company's Adjustment #38:



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Review of DEP's prior conduct demonstrates that DEP management failed to maintain actual compliance with the terms a major contract, resulting in a major breach of contract ruling and settlement payments of \$90 million—money customers would otherwise have benefited from. (See, e.g., Tr. pp. 925, 1306, 1310-10, 1347.) The Company then requested to charge its customers for that loss and to have them pick up the tab on legal fees. (Eg. Tr. pp. 920, 922.).

(ORS Answer at p. 25.) Respectfully, the Company asserts that no further clarification is necessary and it believes that the Commission's intent to approve the Company's \$830,000 litigation cost per Accounting Adjustment #38 is clearly articulated in the Commission's June 19, 2019 directive and that the ruling on reconsideration does not apply to Adjustment #36.

Yours truly,

Frank R. Ellerbe, III

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cc: Parties of Record (via email)  
Joseph Melchers, Esquire (via email)